IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(chapter VIII, Rule 32(2) (b))

Description of case

WPMS No. 1316 of 2002 ; decided on 25-3-03
(along with similar matters)
UP Forest Development Corp. Vs. PO Labour Court

A.F.R. (Approved for reporting)
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x Not approved for reporting

Date 25-3-2003 Initials of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Court No. 2

(1) Civil Writ Petition No. 7009 (M/S) of 2001

Uttaranchal Forest Development
Corporation through its Regional Manager,
Garhwal Region, Kotdwara ..... Petitioner

Versus

Presiding Officer, Labour Court
and another. .....Respondents

(2) Civil Writ Petition No. 1309(M/S) of 2002

Uttaranchal Forest Development
Corporation and another ..... Petitioners

Versus

Presiding officer, Labour Court
and another. ..... Respondents

(3) Civil Writ Petition No. 1310 (M/S) of 2002

Uttaranchal Forest Development
Corporation and another ……..… Petitioners

Versus

Presiding Officer, Labour Court
and another. ……. Respondents

(4) Civil Writ Petition No. 1311 (M/S) of 2002

Uttaranchal Forest Development
Corporation and another ……..… Petitioners

Versus

Presiding Officer, Labour Court
and another. ……. Respondents

(5) Civil Writ Petition No. 1312 (M/S) of 2002

Uttaranchal Forest Development
Corporation and another ……..… Petitioners

Versus

Presiding Officer, Labour Court
and another. ……. Respondents

(6) Civil Writ Petition No. 1313 (M/S) of 2002

Uttaranchal Forest Development
Corporation and another ……. Petitioners

Versus

Presiding Officer, Labour Court
and another. ……. Respondents

(7) Civil Writ Petition No. 1314(M/S) of 2002

Uttaranchal Forest Development
Corporation and another ……..… Petitioners

Versus

Presiding Officer, Labour Court
and another. ……. Respondents

(8) Civil Writ Petition No. 1315 (M/S) of 2002

Uttaranchal Forest Development
Corporation and another ……..… Petitioners

Versus

Presiding Officer, Labour Court
and another. ……. Respondents

(9) Civil Writ Petition No. 1316 (M/S) of 2002

Uttaranchal Forest Development
Corporation and another ……..… Petitioners

Versus

Presiding Officer, Labour Court
and another. ……. Respondents

(10) Civil Writ Petition No. 1317 (M/S) of 2002

Uttaranchal Forest Development
Corporation and another ……..… Petitioners

Versus

Presiding Officer, Labour Court
and another. ……. Respondents

(11) Civil Writ Petition No. 1318 (M/S) of 2002

Uttaranchal Forest Development
Corporation and another ……. Petitioners

Versus

Presiding Officer, Labour Court
and another. ……. Respondents

(12) Civil Writ Petition No. 1319 (M/S) of 2002

Uttaranchal Forest Development
Corporation and another ……..… Petitioners

Versus

Presiding Officer, Labour Court
and another. ……. Respondents

(13) Civil Writ Petition No. 1320 (M/S) of 2002

Uttaranchal Forest Development
Corporation and another ……..… Petitioners

Versus

Presiding Officer, Labour Court
and another. ……. Respondents

(14) Civil Writ Petition No. 1321 (M/S) of 2002

Uttaranchal Forest Development
Corporation and another ……..… Petitioners

Versus

Presiding Officer, Labour Court
and another. ……. Respondents

(15) Civil Writ Petition No. 1322 (M/S) of 2002

Uttaranchal Forest Development
Corporation and another ……. Petitioners

Versus

Presiding Officer, Labour Court
and another. ……. Respondents

(16) Civil Writ Petition No. 1323 (M/S) of 2002

Uttaranchal Forest Development
Corporation and another ……..… Petitioners

Versus

Presiding Officer, Labour Court
and another. ……. Respondents

(17) Civil Writ Petition No. 1324 (M/S) of 2002

Uttaranchal Forest Development
Corporation and another ……..… Petitioners

Versus

Presiding Officer, Labour Court
and another. ……. Respondents

AND

(18) Civil Writ Petition No. 1325 (M/S) of 2002

Uttaranchal Forest Development
Corporation and another ……..… Petitioners

Versus

Presiding Officer, Labour Court
and another. ……. Respondents

…….....

Hon'ble P.C. Verma, J.

All these writ petitions have been filed impugning the award dated 30.3.2001 and 28.08.2001 made by the Labour Court by one and common judgment, holding respondent No. 2, in all these writ petition, workmen of the petitioner-Forest Development Corporation and directed the reemployment of workmen, who have been arrayed in the aforesaid writ petitions as respondent No. 2 with fifty per cent back wages.

All these eighteen Industrial disputes decided by the impugned award were referred in the following terms:-

> "Whether the termination of the services of applicant/workmen (by name with father's name), Scaler by the employer from 31.05.1995 is illegal/unjustified? If so, to which relief/benefit the applicant/workman is entitled to and to what extent?"

The Reference Case No.231 of 1998 was leading case, in which the evidence was led. In Reference Case No.234 of 1998 workman was examined and in Reference Case No.198 of 2000, the witness of employer, namely, Sri Gopal Singh was examined. The workmen pleaded before the Industrial Tribunal that they were retrenched on 31.1.95, 31.3.95 and 31.3.95 without any notice in violation of provisions of Section 6-N of U.P. Industrial Disputes Act, 1947 (herein after referred to as Section 6-N of the Act for short) though there was sufficient work in Garhwal region. The junior workmen have been retained while the senior workmen have been retrenched. Therefore, the retrenchment has been made in violation of Section 6-P of the Act. The employer pleaded before the Industrial Tribunal that necessity arose for retrenchment of these workmen on account of short fall in the work and these workmen were junior in the seniority list, therefore, they were rightly retrenched. All the workmen have been retrenched in accordance with the provisions of Section 6-N of the Act. After the retrenchment, no workman has been employed as there is no excess work with the employer. It was conceded before

the Tribunal on behalf of the workmen that in compliance of Section 6-N of the Act, the workmen have been paid one month's salary in lieu of notice and retrenchment compensation.

It was contended before the Industrial Tribunal on behalf of the workmen that the notice as required under Rule-42 of U.P. Industrial Disputes Rules, 1957 was not sent to the Government and other authorities in the Form prescribed. In reply to this contention of the workmen, the employer contended that the notices were sent, which are available on record in Reference Case Nos.168 of 1997 and 191 of 1997 in respect of all the workmen. Even otherwise, the retrenchment will not be illegal if the notices were not sent.

Next it was contended before the Industrial Tribunal that 54 scalers (workmen) who were junior to workmen/ respondent in these writ petitions in the seniority list dated 16.2.95 and were retrenched with them, have been re-employed and they are working. It has been recorded by the Tribunal that the employer conceded that 54 scalers (workmen) in all the writ petitions were retrenched alongwith them but on their representation they were re-employed vide order dated 27.04.1995 in Tehri Division and they are still working. The explanation given for re-employment of these 54 junior scalers by the employer was that they were initially appointed in Tehri Division and thereafter they were transferred to Garhwal Division, therefore, they were shown junior to the respondent/workmen in the seniority list dated 16.2.1995 and accordingly they were retrenched. On their representation they were sent back to Tehri Division vide order dated 29.4.95, which is evident from the order of the General Manager of Uttaranchal dated 27.4.1995. Industrial Tribunal on the basis of records found that it is evident from the letter of the Manager (Personnel) of Uttar Pradesh Van Nigam dated 14.12.1999 that before the appointed day some part of the Tehri Division was merged in the Garhwal Division and accordingly some scalers were transferred from Tehri to Garhwal and after the retrenchment of these

respondents/workmen on Sri Dhirendra Singh Bisht was transferred to Tehri Division vide order dated 27.4.1995 and again he was transferred back to Garhwal on 16.6.1998 and he was shown at serial no.56 in the seniority list published later on. Likewise, the another workman Sri Sainsarpal Singh, Scaler was also transferred from Tehri Division to Garhwal Division and he was placed at serial no.57. Thus, it is evident that workmen /Scalers from Tehri were transferred to Garhwal Division and were junior to the respondents in these writ petitions and they are still working. The Tribunal came to the conclusion that once the workmen after the merger of some part of Tehri Division in Garhwal Division, were transferred to Garhwal Division and were shown in the seniority list junior to the respondents/workmen and after their retrenchment alongwith the respondent/workmen, their appointment in Tehri Division was illegal as they became workmen in the Garhwal Division and the re-employment, if any, ought to have been made in accordance with the provisions of Section 6-Q of the Act. The Tribunal has also recorded a finding that vide letter dated 17.10.1998, the General Manager, Uttaranchal has transferred 19 Scalers from Tehri Division to Garhwal Division and they are posted in Kotdwar Logging Division, which goes to show that later on work was available in Garhwal Division. The retrenched workmen/Scalers should have been appointed in compliance of Section 6-Q of the Act and the transfer of workmen from Tehri Division should not have been resorted to denying the rightful claim of the retrenched respondent/workmen in the writ petition.

The Tribunal held that retrenchment order has been passed in violation of Section 6-N, 6-P and 6-Q of the Act. The Tribunal also held that Section 6-N of the Act was violated as provisions contained in Section 6-Q were not followed. Accordingly the Tribunal made the award that the retrenchment orders dated 31.1.95, 31.3.95, 29.5.95 and 31.5.95 were illegal and unjustified being in violation of Section 6-N, 6-P and 6-Q and ordered

their reinstatement and also provided for 50% of the back wages from the date the juniors to them were re-employed by the employer.

The petitioners have challenged the award on the ground that the retrenchment of the workmen was done strictly in compliance of Section 6-N of the Act and the Rules framed thereunder. The petitioners accepted their retrenchment compensation and one month's salary in lieu of notice, they did not raise any objection within four years. Retrenchments were done as per the seniority list and only juniors were retrenched. Respondents/workmen never protested against the seniority lists, maintained at Division and Logging Division level and the provisions of Section 6-P of the Act were never violated.

Reliance is placed on the Labour Court award dated 10.8.2001. No workman junior to the respondents/workmen were re-employed. Only workmen were transferred temporarily from one Division to another Division due to exigency of work. Therefore, there was no violation of Section 6-Q as it did not amount to re-employment.

The first question which falls for consideration is as to whether the retrenchment was in violation of Section 6-N of the U.P. Industrial Disputes Act, 1947. Section 6-N of the U.P. Industrial Disputes Act, 1947 reads as under :-

> **" 6-N. Conditions precedent to retrenchment of workmen.-** No workmen employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-
>
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice:
>
> Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;
>
> (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen day; average pay for every completed year of service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the State Govt."

"Long Heading" of the Section and negative language employed in the Section by the Legislature clearly gives out intention of the Legislature that before retrenchment is effected all the conditions are "Conditions precedent" to the retrenchment and compliance thereof is mandatory before the retrenchment. The headings of the Section constitute an important part of the Act itself, and may be read not only as explaining the sections, which immediately follow them, the Section to which it is pre-fixed and all preamble pre-fixed to the Act. Craies on Statute Law on the Heading 'Seventh Edition' says as under:-

" HEADINGS

Heading as part of the Act

> …….. They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording as it appears to me a better key to the constructions of the sections which follow them than might be afforded by a mere preamble."

The opening sentence, on 'Headings' in the Principles of Statutory Interpretation by Justice G.P. Singh, 8th Edition 2001 at page 144 says as under :-

> *"The view is now settled that the Headings or Titles prefixed to sections or group of sections can be referred to in construing an Act of the Legislature. (Reliance was placed Hammer Smith & City Ry. V. Brand, (1869) LR 4 HLC 171; Ingils v. Robertson, (1898) AC 616, pp. 624, 629 (HL); Toronto Corporation v. Toronto Ry., (1907) AC 315, p.324 (PC); Martins v. Fowler, (1926) AC 746, p. 750 (PC); Qualter Hall & Co. Ltd. v. Board of Trade, (1961) 3 All ER 389, pp. 392, 394 (CA); Bhinka v. Charan Singh, AIR 1959 SC 960, p. 966; Director of Public Prosecutions v. Schildkamp, (1969) 3 All ER 1640(HL). Toronto Corporation v. Toronto Ry. Co., (1907) AC 315, p. 324 (PC) (LORD COLLINS); referred to in Re, Ralph George Cariton, (1945) 1 All ER 559, p. 562; Qualter Hall & Co. v. Board of Trade, supra, p. 392. Martins v. Fowler, supra p. 750 : referred to in Qualter Hall & Co. v. Board of Trade, supra, p. 392).*

Therefore, the Heading of the title "Conditions precedent" for retrenchment can be taken in aid to construe the Section 6-N.

The meaning of the "Conditions precedent" given in Word & Phrases (Permanent Edition) is as under:-

> "A "condition precedent" is such as must happen or be performed before a right can accrue to enforce an obligation dependent upon the happening or performance thereof against another in favor of one claiming such right. Cozby v. Edwards, Tex. Civ. App., 203 S.W.2d 569, 574."

I may quote the meaning of "Conditions precedent" from "CORPUS JURIS SECUNDUM-IA, pages 434 and 435 ", which reads as under :-

> "Where conditions precedent to the right to maintain an action are imposed, whether because of a statute or an agreement, or because of the nature and circumstances of the particular case, they must be performed or complied with before the action may be instituted. This rule is particularly applicable where the imposed conditions form part of the right itself, as, for example, in the case where a statute creates a right to which some condition is expressly attached.....
>
> Where notice is made a condition by the agreement or statute creating the right itself, such notice constitutes a condition on the right and an essential element of the cause of action;"

The language used under Section 6-N of the Act, is prohibitory in nature that no workman employed in any Industry, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until; (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired of the workman has been paid in lieu of such notice wages for the period of the notice, provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service; (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six

months; and (c) notice in the prescribed manner is served on the State Government.

In *M.Pentiah v. Muddala Veeramallappa,* AIR 1961 SC 1107, at pages 1112 and 1113 His Lordship K.Subba Rao, J. in a Full Bench consisting of five Judges, observed as under:-

> "This argument ignores the express intention of S. 77 of the Act. Section 77 says: "Subject to such exceptions as the Government may by general or special order direct, no Committee shall transfer any immovable property except in pursuance of a resolution passed at a meeting by a majority of not less than two-third of the whole number of members and in accordance with rules made under this Act, and no Committee shall transfer any property which has been vested in it by the Government except with the sanction of the Government;
> .....
>
> This section confers on the Committee an express power couched in a negative form. Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative."

The Apex Court while interpreting Section 80 of the C.P.C., in *S.N.Dutt* v. *Union of India,* reported in AIR 1961 Supreme Court 1449, laid down that no suit shall be instituted against the Government, until the expiration of two months next after notice in writing has been delivered to, or left at the office of the Secretary to that Government, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered:

The Privy Council in *Bhagchand Dagdusa* v. *Secretary of State,* 54 Ind App 338 : AIR 1927 PC 176 had to consider the true application of Section 80 C.P.C. and held that Section 80 was explicit and mandatory and admitted of no implications or exceptions and had to be strictly complied with and was applicable to all forms of action and all kinds of relief.

The Apex Court in the case of *A.K.Roy* v. *State of Punjab* reported in AIR 1986 Supreme Court 2160 while interpreting Section

20 (1) of the Prevention of Food Adulteration Act, 1954 and Rule 3 of the prevention of Food Adulteration (Punjab) Rules, 1958 held as under :-

> "The use of the negative words in Section 20(1) "No prosecution for an offence under this Act... shall be instituted except by or with the written consent of " plainly make the requirements of the section imperative. That conclusion of ours must necessarily follow from the well known rule of construction of inference to be drawn from the negative language used in a statute stated by Craies on Statute Law, 6th edn., p.263 in his own terse language :
>
> " If the requirements of a statute which prescribe the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases absolute, and that neglect to attend to them will invalidate the whole proceedings."
>
> Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the Legislature in enacting Section 20(1) was to confer a power on the authorities specified therein which power had to be exercised in the manner provided and not otherwise."

The Industrial Disputes Act, 1947 (hereinafter referred to as the Act) contains the similar provision under Section 25-F of the Act. The Apex Court in *State of Bombay* v. *Hospital Mazdoor Sabha* , reported in AIR 1960 Supreme Court 610 (V 47 C 95) while construing Section 25F (b) held as under :-

> " Clauses (a) and (c) of the said section prescribe similar conditions but we are not concerned with them. On a plain reading of Section 25 F (b) it is clear that the requirement prescribed by it is a condition precedent for the retrenchment of the workman. The section provides that no workman shall be retrenched until the condition in question has been satisfied. It is difficult to accede to the argument that when the section imposes in mandatory terms a condition precedent, non-compliance with the said condition would not render the impugned retrenchment invalid. "

The Apex Court in Full Bench, consisting of their Lordships P.B.Gajendragadkar, K.N.Wanchoo and K.C.Das Gupta,JJ.

again considered the provisions of Section 25-F of the Industrial Disputes Act, 1947 and the nature of conditions (a), (b) and (c) thereof in *Bombay Union of Journalists and others, Appellants* v. *State of Bombay and another*, Respondents, reported in AIR 1964 Supreme Court 1617 (V 51 C 217) and after referring the decisions in A.I.R. 1960 Supreme Court 610 (V 47) *State of Bombay Hospital* v. *Hospital Mazdoor Sabha* and A.I.R. 1960 Supreme Court 815 (V 47) *Tea District Labour Association Calcutta* v. *Ex-Employees of Tea Districts Labour Association* held conditions (a) and (b) of Section 25-F are conditions precedent and must be complied with before the retrenchment is effected.

In *Bombay Union of Journalists case* (supra) the Apex Court considered and held in para - 12 as under :-

> "In this connection, there is one more consideration which is relevant. We have already seen the requirement of S. 25F (a). There is a proviso to S. 25F(a) which lays down that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of services. Clause (a) of S. 25F, therefore, affords a safeguard in the interests of the retrenched employee; it requires the employer either to give him one month's notice or to pay him wages in lieu thereof before he is retrenched. Similarly, clause (b) provides that the workman has to be paid at the time of retrenchment, compensation which shall be equivalent to 15 day's average pay for every completed year of service or any part thereof in excess of six months. It would be noticed that this payment has to be made at the time of retrenchment, and this requirement again provides a safeguard in the interests of the workman; he must be given one month's notice or wages in lieu thereof and he must get retrenchment compensation as prescribed by clause (b). The object which the Legislature had in mind in making these two conditions obligatory and in constituting them into conditions precedent is obvious. These provisions have to be satisfied before a workman can be retrenched. The hardship resulting from retrenchment has been partially redressed by these two clauses, and so, there is every justification for making them conditions precedent."

Their Lordships did not hold the 'condition (c)' to be a condition precedent on following three considerations, stated in paras-7, 11 and 12 of the judgment.

The first consideration as contained in para-7 of the judgment is reproduced hereunder :-

> " There is no substance in this argument. It appears that the Rules framed by respondent No.1 under the Act indicate that respondent No.1 has construed the provision of S. 25-F © as being directory and not as constituting a condition precedent for the validity of retrenchment under S. 25-F. Rule 80 of the said Rules clearly shows that where the employer has retrenched the employee by offering to pay him the requisite amount of remuneration in lieu of notice prescribed by S. 25-F (a), the employer is required to serve the notice of the said retrenched the within seven days of the date of retrenchment, and that means that in such a case, the notice has to be served on the government before retrenchment is effected. In other words, R.80, it is conceded, treats the notice prescribed by S. 25-F (c) as condition subsequent and not a condition precedent. "

The second consideration, which is based on the Rules framed by the Government, as the same was the basis of first condition, is found in para-11 of the judgment, which reads as under :-

> "The argument based on the negative form in which the provision is enacted and the use of the word "until" no doubt are in favour of the appellant's contention, but the context seems to require a different treatment to the provision contained in cl. (c). Besides, the requirement introduced by the use of the word "until" is complied with even on the view we are inclined to take about the nature of the condition prescribed by clause (c), because after the retrenchment is effected, the employer has to comply with the condition of giving notice about the said retrenchment to the appropriate Government, and that is where the provision in clause (c) that the notice has to be served in the prescribed manner assumes significance. Rules have been framed by the Central Government and the State Governments in respect of this notice and, stated broadly, it does appear that these Rules do not require a notice to be served in every case before retrenchment is effected. In regard to retrenchment effected on paying the workman his wages in lieu of notice, the Rules seem to provide that the notice in that behalf should be served within the specified period prescribed by them; that is to say, under the Rules, notice in such a case has to be served not before the retrenchment, but after the retrenchment within the specified period."

The third consideration is based on the object of the notice required to be given in condition(c), which is found in para-12 of the judgment, reads as under:-

> "Clause (c) is not intended to protect the interests of the workman as such. It is only intended to give intimation to the appropriate Government about the retrenchment, and that only helps the Government Keep itself informed about the conditions of employment in the different industries within its region. There does not appear to be present any compelling consideration which would justify the making of the provison prescribed by clause (c) a condition precedent as in the case of clause (a) and (b)."

Therefore, having regard to the object which is intended to be achieved by clauses (a) and (b) as distinguished from the object of clause (c), it was found not to be unreasonable to hold that clause (c), unlike clauses (a) and (b), is not a condition precedent. It is clear from first two considerations, quoted above, that considerations are bases on the Rules framed by the appropriate Government, which provided service of notice within a week from the date of retrenchment. Therefore, it is a condition subsequent and the third consideration is the object of clause (c) of Section 25-F. The object seems to have been deciphered in the back ground of notice, to be given in the prescribed manner i.e. according to the Rules framed by the appropriate Government and has held that it was only intimation to keep the Government informed about the conditions of employment in the different industries. The Court found that there was not present any compelling consideration, which would make clause (c) a condition precedent. Hidden consideration was that this condition did not provide any safeguard to the workman, which could be said to be affected by non-compliance and could be a compelling consideration for which the provision could be made a condition precedent. The rules prescribed by the appropriate Government, as noticed above, have also played a role in deciphering the object of clause (c) of Section 25-F in the judgment.

Under Section 23 of the U.P. Industrial Disputes Act, rule making power has been conferred upon the State Government. Rule has to be consistent to the provisions of the Act for giving effect to the provisions of the Act. Sub-Section (2) provides that without prejudice to the generality of the foregoing power such rules may provide for-

"(a)...
(b)...
(c)...
(d)...
(e)...
(f)...
(g)...
(h) the matters which are to be and may be prescribed."

Sub-Section (3) of Section 23 provides that all rules made under this Section shall as soon as possible after they are made be laid before the State Legislature.

In exercise of the power conferred by Section 23 of the U.P. Industrial Dispute Act, 1947, (U.P. Act XXVIII of 1947) the Governor of Uttar Pradesh was pleased to make the Rules, known as Industrial Disputes Rules, 1957. Rules 42 and 43 therof provide procedure for retrenchment of workmen, which read as under :-

"42. **Procedure for retrenchment of workmen.-**

(1) If any employer desires to retrench any workman, employed is establishment who has been in continuous service under him for not less than one year (hereinafter referred to as "workman" in this rule and in Rule 43, he shall give notice of such retrenchment in Form XIX to the Secretary to Government, U.P., Labour (A) Department, to the Labour Commissioner, U.P. and to the Conciliation Officer of the area concerned by registered post, in the following manner:

(a) Where a notice, as required under clause (a) of Section 6-N is given to the workman, notice of retrenchment shall be sent on the same day on which notice is given to the workman,

(b) and he is paid one month's wages in lieu of by notice, notice of retrenchment shall be sent on the same date on which wages are paid to the workman; and

(c) where reternchment is or is intended to be carried out under an agreement, which specifies a date for termination of service, notice of retrenchment shall be sent on the date on which the agreement was made, if the period for the date of the agreement to the date of retrenchment is of less than one month, otherwise not less than one month before the date of retenchment.

(2) The employer shall prepare a list of the workman in the particular category from which retrenchment is contemplated, arranged according to the seniority of their service in that category, and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the date of retrenchment.

(3) Before retrenchment of a workman, the employer shall, for the purposes of sending intimation on the workman for re-employment as required in Rule 43 obtain the address of the workman in writing from the workman duly signed, or thumb-impression affixed by the said workman."

Clause -3 of From XIX, in which notice is to be sent to the Secretary to Government, Labour Department, alongwith copy to the Labour Commissioner and to the Conciliation Officer of the Region is part of the Rule, is reproduced as under:-

" 3. Information regarding the total number of workmen employed in the industry and the total number of <u>those who will be affected by the retenchment, is given below:</u>

Class or designation of workmen to be retrenched	Number of workmen	
	Employed	To be retrenched
1	2	3
1.		
2.		
3.,etc."		

From the perusal of the Rules framed, providing the procedure for retrenchment of workmen, it is clear that notice to the Government shall be given in Form-XIX in the manner provided under Sub-Rule(1) clauses (a), (b) and (c). Clause (a) provides that the notice of retrenchment shall be sent on the **same day,** on which the notice is given to the workman as required under clause (a) of Section

6-N. Clause (b) provides that notice for retrenchment shall be sent on the **same day,** on which the wages are paid to the workmen. Sub-Rule (2) provides that atleast seven days before the date of retrenchment the employer shall prepare a list of the workmen in a particular category, from which the retrenchment is contemplated, arranged according to the seniority of their service in that category and shall paste it on the notice board in conspicuous places in the premises of Industrial establishment. Sub-Rule (3) of Rule 42 provides that before the retrenchment of the workmen, the employer shall obtain the addresses in writing of the workman duly signed, or thumb-impression affixed by the said workman for the purposes of sending intimation to the workman for re-employment, as required in Rule 43 Rule-43 reads as under :-

" **43. Re-employment of retrenched workmen.-**

(1) At least ten days before the date on which any vacancies are to be filled in his industrial establishment, an employer shall arrange for the display on a notice-board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also send intimation thereof to everyone of the retrenched workmen eligible to be considered therefore, by registered post or personal delivery to the address given by the workman concerned at the time of retrenchment or at any time thereafter :

Provided that where the number of such vacancies is less than the number of the retrenched workmen, it shall be sufficient if intimation is sent by the employer individually to
such number of seniormost amongst the eligible workmen as is not less than double the number of the vacancies:

Provided further that where the vacancy is of a duration of less than one month, there shall be no obligation on the
employer to send intimation of such vacancy to individual retrenched workmen:

Provided further that if a retrenched workman does not offer himself for re-employment in spite of having received such intimation the employer may not intimate to him the vacancies that may be filled on any subsequent occasion."

From the reading of the aforesaid rule, it is clear that the manner in which the notice is sent to the Government is a safe guard in the interest of the workman. The notice on the same date, on which either the notice is given under clause (a) or wages are paid under clause (b) under Section 6-N, means that the notice to the Government should be given

simultaneously, which is clear from clause-3 the proforma, requiring the information that "total number of those who will be affected by the retrenchment". Thus, notice is not required to be sent subsequent to the retrenchment. Therefore, sending of notice under the Rules framed by the State of U.P. cannot be said to be condition subsequent of retrenchment.

Sub Rules (2) and (3) read with Proforma, are part of Rule-42, which requires the procedure to be followed before the retrenchment is effected. Thus, the manner provided under Rule -42 provides safe guard to the workmen, protecting them from illegal retrenchment as the Government may come to know about the legality or illegality of the retrenchment and in case of illegality, may protect a workman. Thus, notice is made a condition by statute protecting the right of workman, such notice constitutes a condition an essential element of the cause of action (See "CORPUS JURIS SECUNDUM-IA" (supra)).

Therefore, clause (c) of Section 6-N of U.P.Industrial Disputes Act read with Rule 42 of the Rules framed thereunder, which has been enacted with the same object i.e. to safe guard the interest of the workmen, is clearly distinct and different than that which was considered in the case of *Bombay Union of Journalist* (supra). The Industrial Disputes (Bombay) Rules (1947), which were considered in *Bombay Union of Journalist* (supra), contemplated the service of notice within a week and did not have the provision like sub-rules (2) and (3) as under Rule-42 of the U.P. Rules. Moreover, this fact cannot be overlooked that in *Bombay Union Journalist* (supra) Industrial Disputes Act, 1947 read with Industrial Disputes (Bombay) Rules (1947) was involved. Here we are concerned with U.P. Industrial Disputes Act, 1947 read with Rules framed thereunder. The Industrial Disputes (Bombay) Rules (1947) are distinct from the Rules made under U.P. Industrial Disputes Act, 1947 so far as the present controversy is concerned. Therfore, the judgment delivered in *Bombay Union of Journalist's case* (supra) is not applicable to the case in hand.

Therefore, in view of the provision contained in Rule-42 of U.P. Industrial Disputes Rules, 1957, clues (c) of Section 6-N is also a condition precedent and violation thereof renders the action of retrenchment illegal as in case of clauses (a) and (b) of Section 6-N of U.P. Industrial Disputes Act. Thus, clause (c) read with Rule 42 is mandatory.

In the present case the different retrenchment order were passed on 30.5.95, 30.3.95, 30.03.95, 30.3.95, 30.3.95, 29.3.95, 30.5.95,29.5.95,30.5.95,30.3.95 and 30.3.95, which are contained in Annexure No. 2 to 13 respectively to the writ petition and the notices sent to the Government are dated 31.03.98, 1.4.95 and 31.5.97 as shown and contained in Annexure No. 14 to 16 to the writ petition.

Thus, the notice have not been sent on the same day as required by clause (b) of Rule-1 and have been sent on a subsequent date. There is also no statement by the petitioner on record that requirement of sub-rule (2) was fulfilled before the retrenchment was effected. There is further violation of sub-rule (3) as the perusal of the retrenchment orders contained in Annexures-2 to 13 shows that the workmen were required to sent their permanent addresses while sub-rule (2) provides that before retrenchment is effected, the employer shall obtain in writing the address from the workmen duly signed, or thumb-impression affixed by the said workmen before retrenchment is effected. Therefore, from the evidence on record, it is established that there was non-compliance of Rule-42. Accordingly there was non-compliance of clause (c) of Section 6-N, which I have held to be mandatory.

For the reasons recorded above, I hold that the retrenchment of the workmen, being in violation of Section 6-N, was void and of no legal effects.

Now, I may proceed to examine as to whether there was violation of Sections 6-P and 6-Q of the U.P. Industrial Disputes Act. Section 6-P of the U.P. Industrial Disputes Act provides for retrenchment. It provides that where any workmen in an industrial

establishment, who is a citizen of India, is to be retrenchment and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workmen in this behalf, the employer shall ordinarily retrench the workmen who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workmen. Section 6-P provides procedure for retrenchment that the principal of last come first go shall be applied when retrenchment is to be effected in a particular category of workmen in the establishment. Since it is a procedure for retrenchment, therefore, in sub-rule (2) of Rule 42 of the U.P. Industrial Disputes Rules protection has been made that the employer shall prepare a list of workmen in the particular category from which retrenchment is contemplated, arranged according to the seniority of their service in that category, and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the date of retrenchment. The Industrial Tribunal has recorded a finding that Sri Dhirendra Singh Bisht and Sri Sainsarpal Singh and other, junior to the respondent/workmen in these write petition, were transferred to Garhwal Division and are still working. This finding has not been shown perverse rather it is admitted that they were transferred and were junior, Therefore, it is establishment that the employer did not publish a list of workmen in the particular category from which the retrenchment was contemplated according to their seniority of the service in that category and did not cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the establishment at least seven days before the date of retrenchment. Therefore, there was violation of sub-rule (2) of Rule 42 as well as violation of Section 6-P and Section 6-Q and Rule 43, quoted above.

The provisions of Section 6-P of U.P. Industrial Disputes Act are same as the provisions of Section 25-G and the provisions of Section 6-Q are same as those of Section 25-H of the Industrial Disputes Act.

It has further been recorded a finding of fact by the Tribunal that time workmen/ Scalars from Tehri Division were transferred to Garhwal Division and they were posted at Kotdwara Logging Division, Which shows that the work was available in Garhwal Division and the retrenched workmen/ Scalars ought to have been-re-employed in compliance of Section 6-Q." The last come first go." Or " The first come last go" is settled position of Industrial law (See *Subong Tea Estate* v. *The Outgoing Management of Subong Tea Estate & another*, reported in AIR 1967 Supreme Court 420 (V 54.)

In the present case neither any list was prepared, arranged according to the seniority and pasted on a notice board in a conspicuous place as required under sub-rule (2) of Rule 42 nor permanent addresses, duly singed or thumb- impression affixed by the workmen were obtained prior of effecting the retrenchment . Principal of 'first come last goes" was not followed and the retrenched workmen were not offered for re-employment first, before effecting the transfer of employees from Tehri Division of Garhwal Division.

Therefore, the retrenchment orders were passed in violation of provisions of Section 6-N and 6-Q of the U.P. Industrial Disputes Act and Rules 42 and 43 of U.P. Industrial Disputes Rules framed thereunder. Therefore, retrenchment was void and was of no legal consequence and the relationship of employee and employer did not snap. Therefore, the Tribunal rightly held the reinstatement of the workmen. The Tribunal also rightly awarded fifty per cent back wages in the fact and circumstances of the case that the reference was belated one and the workmen had accepted the amount offered to them towards the retrenchment compensation .

For the reasons recorded above, I do not find any illegality or infirmity in the judgment passed by the Industrial Tribunal. The Petition is devoid of merits and is dismissed accordingly.

25.03.2003

P.Singh